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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,889	10/23/2001	Ernest Aranyi	2347	6038

7590

07/17/2003

U.S. Surgical, a division of
TYCO HEALTHCARE GROUP LP
150 Glover Avenue
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EXAMINER

BAXTER, JESSICA R

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 07/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/053,889

Applicant(s)

ARANYI ET AL. CS

Examiner

Jessica R Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: In claim 1 line 9, change "tubular and a firing position" to --tubular body and a firing position--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3-6 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 3 recites the limitation "the fastener driving head" in line 2. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 9 recites the limitation "the third control" in line 1. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 9 recites the limitation "the fastener carrying slider" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international

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application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by PG-PUB 2003/0023248 to Parodi.

Regarding claim 1, Parodi discloses an endovascular fastener applicator for endoluminally fastening a prosthetic graft (graft 100) to a vessel with at least one fastener comprising: a tubular body configured for positioning within a vessel (sleeve 64); an expandable portion disposed adjacent a distal end of the tubular body and being expandable to support a prosthetic in contact with an inner surface of a vessel (expandable portion 66); a fastener applying head rotatably mounted on the distal end of the tubular body and movable between a load position longitudinally aligned with the tubular body (head 260) and a firing position oriented approximately 90° with respect to the tubular body (Paragraph 0092); and a handle assembly mounted on the proximal end of the tubular body (handle 144).

Regarding claim 2, Parodi discloses that the applicator has a first control to expand the expandable portion (Paragraph 0068).

Regarding claim 3, Parodi discloses that the handle assembly includes a second control to pivot the fastener driving head to the firing position (Paragraphs 0094 and 0095).

Regarding claim 4, Parodi discloses that the second control also rotates the fastener driving head about the longitudinal axis of the tubular body (Paragraph 0101).

Regarding claim 5, Parodi discloses that the handle assembly includes a third control to move a fastener out of the fastener driving head and into tissue (push bar 148).

Regarding claim 6, Parodi discloses that the third control further moves a fastener carrying slider into engagement with tissue (Paragraph 0075-0076).

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Regarding claim 7, Parodi discloses that the fastener is a helical fastener (Paragraph 0071).

Regarding claim 8, Parodi discloses a storage chamber extending from a distal end of the expandable portion, the storage chamber containing at least one helical coil fastener (Paragraph 0093).

Regarding claim 9, Parodi discloses that the third control is connected to the fastener carrying slider by a wire formed of shape memory material (Paragraphs 0067 and 0072).

Regarding claim 10, Parodi discloses that the fastener is a conventional staple (Paragraph 0071).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art with respect to fastener applicators:

U.S. Patent No. 5,005,749 to Aranyi

U.S. Patent No. 6,416,522 to Strecker

U.S. Patent No. 5,397,345 to Lazarus

WO 99/04724 to Strecker

U.S. Patent No. 5,843,169 to Taheri

DE 197 31 834 to Strecker

U.S. Patent No. 6,336,933 to Parodi

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 703-305-4069. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone numbers for the organization

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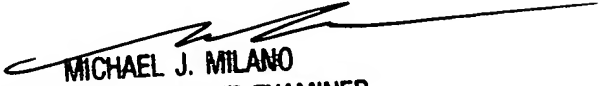
where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Jessica R Baxter
Examiner
Art Unit 3731

jrb
jrb

July 14, 2003


MICHAEL J. MILANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700